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No. 89-736

In the Supreme Court of the United States

OCTOBER TERM, 1989

FEDERAL LABOR RELATIONS AUTHORITY, PETITIONER

v.

FORT KNOX DEPENDENT SCHOOLS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE FORT KNOX DEPENDENT SCHOOLS

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QUESTIONS PRESENTED

1. Whether the wages and money-related fringe benefits of federal employees whose rate of compensation is not entirely fixed by statute are negotiable "conditions of employment" under 5 U.S.C. 7103(a)(14).

2. Whether a proposal concerning overtime compensation for teachers at a school for dependents of Army personnel is contrary to 20 U.S.C. 241—which provides that education at the dependents schools is to be comparable to that at local public schools and that, to the maximum extent practicable, the per pupil costs at the dependents schools should not exceed the per pupil costs at schools in comparable communities in the State—because the proposal does not purport to be based on prevailing practices at local public schools.

3. Whether there is a "compelling need" for an Army regulation providing that, to the maximum extent practicable, the compensation of teachers at the dependents schools is to be equal to compensation at local public schools.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 875 F.2d 1179. The opinion of the Federal Labor Relations Authority (Pet. App. 18a-35a) is reported at 25 F.L.R.A. 1119.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 1989. A petition for rehearing was denied on August 10, 1989 (Pet. App. 16a-17a). The petition for a writ of certiorari was filed on November 7, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

During contract negotiations, the Fort Knox Teachers Association, which represents teachers at the school for dependents of Army personnel stationed at the base, proposed that teachers performing bus chaperone duty be paid overtime at the rate of time and one half. The Army declined to negotiate over the proposal. It contended that proposals relating to compensation are not negotiable because compensation is not a "condition[ ] of employment" within the meaning of 5 U.S.C. 7103(a)(14), which defines the phrase to include "personnel policies, practices, and matters * * * affecting working conditions." The Army also contended that the proposal, which did not purport to be based on prevailing practices in the local public schools, was contrary to 20 U.S.C. 241, which provides that education at the dependents schools is to be comparable to that at public schools in the State where the school is located and that education at the dependents schools should be provided at a cost per pupil that, to the maximum extent practicable, does not exceed the per pupil cost at comparable public schools. In addition, the Army contended that the proposal is not negotiable because it is contrary to Army Reg. 352-3, 1-7(h), which provides that the compensation paid to teachers at the dependents schools is to be comparable to that paid at local public schools, and because there is a "compelling need" for the regulation within the meaning of 5 U.S.C. 7117(a)(2).

The Federal Labor Relations Authority rejected each of the Army's contentions and held the proposal negotiable. Chairman Calhoun dissented. He contended that compensation is not a negotiable condition of employment under 5 U.S.C. 7102(2). Pet. App. 32a.

The court of appeals reversed. Pet. App. 1a-15a. It concluded that "wages and other compensation matters with

regard to federal employees fall outside the duty to bargain." *Id.* at 5a-6a. It held in the alternative that "the Army's regulation precluding wage bargaining implemented properly the mandate" of Section 241. Pet. App. at 8a. Judge Boggs dissented, disagreeing with the majority on both points. *Id.* at 9a-15a.

DISCUSSION

The FLRA asks the Court to hold this case for disposition in light of No. 89-65, *Fort Stewart Schools* v. *FLRA* (argued Jan. 10, 1989). While we believe that the decision below is correct, we agree that the petition should be held while *Fort Stewart* is pending.

The dispute in *Fort Stewart* also arose at a dependents school after a union made certain proposals relating to the compensation of teachers. The Eleventh Circuit held that wages are negotiable "conditions of employment" and that there is no "compelling need" for the Army's regulation requiring wages, "to the maximum extent practicable," to be equal to those at local public schools. 860 F.2d 396 (1988). Thus, the first and the third questions presented in this case are identical to questions presented in that case, and the second question presented here is closely related to the third question presented in both cases. In light of the similarities between the two cases, the holding in *Fort Stewart* is likely to control here.

CONCLUSION

The petition for a writ of certiorari should be held and disposed of as appropriate in light of No. 89-65, *Fort Stewart Schools* v. *FLRA*.

Respectfully submitted.

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* The Solicitor General is disqualified in this case.

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